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HOUSE BILL 360

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO TAXATION; CREATING THE TAX FRAUD INVESTIGATIONS
DIVISION OF THE TAXATION AND REVENUE DEPARTMENT; EXPANDING THE
DUTIES AND POWERS OF THE TAXATION AND REVENUE DEPARTMENT;
CREATING AND AMENDING TAX OFFENSES AND PENALTIES; RECONCILING
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-4 NMSA 1978 (being Laws 1965,
Chapter 248, Section 10, as amended) is amended to read:

"7-1-4. INVESTIGATIVE AUTHORITY AND POWERS.--

A. For the purpose of establishing or determining
the extent of the liability of any person for any tax, for the
purpose of collecting any tax, [or] for the purpose of
enforcing any statute administered under the provisions of the

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1 Tax Administration Act or for the purpose of investigating
2 possible criminal violations of the revenue laws of this state,
3 including fraud or other crimes that may affect the taxes due
4 to the state, the secretary or the secretary's delegate is
5 authorized to examine equipment and to examine and require the
6 production of any pertinent records, books, information or
7 evidence, to require the presence of any person and to require
8 that person to testify under oath concerning the subject matter
9 of the inquiry and to make a permanent record of the
10 proceedings.

11 B. As a means for accomplishing the matters
12 referred to in Subsection A of this section, the secretary is
13 hereby invested with the power to issue subpoenas and
14 summonses. In no case shall a subpoena or summons be made
15 returnable less than ten days from the date of service.

16 C. Any subpoena or summons issued by the secretary
17 shall state with reasonable certainty the nature of the
18 evidence required to be produced, the time and place of the
19 hearing, the nature of the inquiry or investigation and the
20 consequences of failure to obey the subpoena or summons; shall
21 bear the seal of the department; and shall be attested by the
22 secretary.

23 D. After service of a subpoena or summons upon the
24 person, if any person neglects or refuses to appear in response
25 to the summons or neglects or refuses to produce records or

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1 other evidence or to allow the inspection of equipment in
2 response to the subpoena or neglects or refuses to give
3 testimony as required, the department may invoke the aid of the
4 court in the enforcement of the subpoena or summons. In
5 appropriate cases, the court shall issue its order requiring
6 the person to appear and testify or produce books or records
7 and may, upon failure of the person to comply with the order,
8 punish the person for contempt.

9 E. If a person, the extent of whose tax liability
10 is being established, or that person's agent, nominee or other
11 person acting under the direction or control of that person,
12 files an action with the court to quash a subpoena or summons
13 issued by that court pursuant to this section, the running of
14 the period of limitations pursuant to Sections 7-1-18 and
15 7-1-19 NMSA 1978 or Section 30-1-8 NMSA 1978 with respect to
16 the tax liability under investigation shall be suspended for
17 the period during which a proceeding and related appeals
18 regarding the enforcement of the subpoena or summons is
19 pending."

20 Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965,
21 Chapter 248, Section 13, as amended by Laws 2003, Chapter 398,
22 Section 5 and by Laws 2003, Chapter 439, Section 1) is amended
23 to read:

24 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
25 INFORMATION.--It is unlawful for an employee of the department

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1 or a former employee of the department to reveal to an
2 individual other than another employee of the department,
3 information contained in the return of a taxpayer made pursuant
4 to a law subject to administration and enforcement under the
5 provisions of the Tax Administration Act or any other
6 information about a taxpayer acquired as a result of his
7 employment by the department and not available from public
8 sources, except:

9 A. to an authorized representative of another
10 state; provided that the receiving state has entered into a
11 written agreement with the department to use the information
12 for tax purposes only and that the receiving state has enacted
13 a confidentiality statute similar to this section to which the
14 representative is subject;

15 B. to a representative of the secretary of the
16 treasury or the secretary's delegate pursuant to the terms of a
17 reciprocal agreement entered into with the federal government
18 for exchange of the information;

19 C. to the multistate tax commission or its
20 authorized representative; provided that the information is
21 used for tax purposes only and is disclosed by the multistate
22 tax commission only to states that have met the requirements of
23 Subsection A of this section;

24 D. to a district court, an appellate court or a
25 federal court:

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1 (1) in response to an order thereof in an
2 action relating to taxes or an action in fraud or other crime
3 that may affect taxes due to the state to which the state is a
4 party and in which the information sought is about a taxpayer
5 who is party to the action and is material to the inquiry, in
6 which case only that information may be required to be produced
7 in court and admitted in evidence subject to court order
8 protecting the confidentiality of the information and no more;

9 (2) in an action in which the department is
10 attempting to enforce an act with which the department is
11 charged or to collect a tax; or

12 (3) in any matter in which the department is a
13 party and the taxpayer has put his own liability for taxes at
14 issue, in which case only that information regarding the
15 taxpayer who is party to the action may be produced, but this
16 shall not prevent the disclosure of department policy or
17 interpretation of law arising from circumstances of a taxpayer
18 who is not a party;

19 E. to the taxpayer or to the taxpayer's authorized
20 representative; provided, however, that nothing in this
21 subsection shall be construed to require any employee to
22 testify in a judicial proceeding except as provided in
23 Subsection D of this section;

24 F. information obtained through the administration
25 of a law not subject to administration and enforcement under

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1 the provisions of the Tax Administration Act to the extent that
2 release of that information is not otherwise prohibited by law;

3 G. in a manner, for statistical purposes, that the
4 information revealed is not identified as applicable to an
5 individual taxpayer;

6 H. with reference to information concerning the tax
7 on tobacco imposed by Sections 7-12-1 through 7-12-13, [~~and~~
8 ~~Sections~~] 7-12-15 and 7-12-17 NMSA 1978 to a committee of the
9 legislature for a valid legislative purpose or to the attorney
10 general for purposes of Section 6-4-13 NMSA 1978 and the master
11 settlement agreement defined in Section 6-4-12 NMSA 1978;

12 I. to a transferee, assignee, buyer or lessor of a
13 liquor license, the amount and basis of an unpaid assessment of
14 tax for which his transferor, assignor, seller or lessee is
15 liable;

16 J. to a purchaser of a business as provided in
17 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis
18 of an unpaid assessment of tax for which the purchaser's seller
19 is liable;

20 K. to a municipality of this state upon its request
21 for a period specified by that municipality within the twelve
22 months preceding the request for the information by that
23 municipality:

24 (1) the names, taxpayer identification numbers
25 and addresses of registered gross receipts taxpayers reporting

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1 gross receipts for that municipality under the Gross Receipts
2 and Compensating Tax Act or a local option gross receipts tax
3 imposed by that municipality. The department may also release
4 the information described in this paragraph quarterly or upon
5 such other periodic basis as the secretary and the municipality
6 may agree; and

7 (2) information indicating whether persons
8 shown on a list of businesses located within that municipality
9 furnished by the municipality have reported gross receipts to
10 the department but have not reported gross receipts for that
11 municipality under the Gross Receipts and Compensating Tax Act
12 or a local option gross receipts tax imposed by that
13 municipality.

14 The employees of municipalities receiving information as
15 provided in this subsection shall be subject to the penalty
16 contained in Section 7-1-76 NMSA 1978 if that information is
17 revealed to individuals other than other employees of the
18 municipality in question or the department;

19 L. to the commissioner of public lands for use in
20 auditing that pertains to rentals, royalties, fees and other
21 payments due the state under land sale, land lease or other
22 land use contracts. The commissioner of public lands and
23 employees of the commissioner are subject to the same
24 provisions regarding confidentiality of information as
25 employees of the department;

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1 M. the department shall furnish, upon request by
2 the child support enforcement division of the human services
3 department, the last known address with date of all names
4 certified to the department as being absent parents of children
5 receiving public financial assistance. The child support
6 enforcement division personnel shall use such information only
7 for the purpose of enforcing the support liability of the
8 absent parents and shall not use the information or disclose it
9 for any other purpose; the child support enforcement division
10 and its employees are subject to the provisions of this section
11 with respect to any information acquired from the department;

12 N. with respect to the tax on gasoline imposed by
13 the Gasoline Tax Act, the department shall make available for
14 public inspection at monthly intervals a report covering the
15 number of gallons of gasoline and ethanol-blended fuels
16 received and deducted, and the amount of tax paid by each
17 person required to file a gasoline tax return or pay gasoline
18 tax in the state of New Mexico;

19 O. the identity of a rack operator, importer,
20 blender, supplier or distributor and the number of gallons
21 reported on returns required under the Gasoline Tax Act,
22 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a
23 rack operator, importer, blender, distributor or supplier, but
24 only when it is necessary to enable the department to carry out
25 its duties under the Gasoline Tax Act, the Special Fuels

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1 Supplier Tax Act or the Alternative Fuel Tax Act;

2 P. the department shall release upon request only
3 the names and addresses of all gasoline or special fuel
4 distributors, wholesalers and retailers to the New Mexico
5 department of agriculture, the employees of which are thereby
6 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
7 that information is revealed to individuals other than
8 employees of either the New Mexico department of agriculture or
9 the department;

10 Q. the department shall answer all inquiries
11 concerning whether a person is or is not a registered taxpayer
12 for tax programs that require registration, but nothing in this
13 subsection shall be construed to allow the department to answer
14 inquiries concerning whether a person has filed a tax return;

15 R. upon request of a municipality or county of this
16 state, the department shall permit officials or employees of
17 the municipality or county to inspect the records of the
18 department pertaining to an increase or decrease to a
19 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
20 1978 for the purpose of reviewing the basis for the increase or
21 decrease. The municipal or county officials or employees
22 receiving information provided in this subsection shall not
23 reveal that information to any person other than another
24 employee of the municipality or the county, the department or a
25 district court, an appellate court or a federal court in a

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1 proceeding relating to a disputed distribution and in which
2 both the state and the municipality or county are parties.
3 Information provided pursuant to provisions of this subsection
4 that is revealed other than as provided in this subsection
5 shall subject the person revealing the information to the
6 [~~penalties~~] penalty contained in Section 7-1-76 NMSA 1978;

7 S. to a county of this state that has in effect a
8 local option gross receipts tax imposed by the county upon its
9 request for a period specified by that county within the twelve
10 months preceding the request for the information by that
11 county:

12 (1) the names, taxpayer identification numbers
13 and addresses of registered gross receipts taxpayers reporting
14 gross receipts either for that county in the case of a local
15 option gross receipts tax imposed on a countywide basis or only
16 for the areas of that county outside of any incorporated
17 municipalities within that county in the case of a county local
18 option gross receipts tax imposed only in areas of the county
19 outside of any incorporated municipalities. The department may
20 also release the information described in this paragraph
21 quarterly or upon such other periodic basis as the secretary
22 and the county may agree;

23 (2) in the case of a local option gross
24 receipts tax imposed by a county on a countywide basis,
25 information indicating whether persons shown on a list of

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1 businesses located within the county furnished by the county
2 have reported gross receipts to the department but have not
3 reported gross receipts for that county under the Gross
4 Receipts and Compensating Tax Act or a local option gross
5 receipts tax imposed by that county on a countywide basis; and

6 (3) in the case of a local option gross
7 receipts tax imposed by a county only on persons engaging in
8 business in that area of the county outside of incorporated
9 municipalities, information indicating whether persons on a
10 list of businesses located in that county outside of the
11 incorporated municipalities but within that county furnished by
12 the county have reported gross receipts to the department but
13 have not reported gross receipts for that county outside of the
14 incorporated municipalities within that county under the Gross
15 Receipts and Compensating Tax Act or a local option gross
16 receipts tax imposed by the county only on persons engaging in
17 business in that county outside of the incorporated
18 municipalities.

19 The officers and employees of counties receiving
20 information as provided in this subsection shall be subject to
21 the penalty contained in Section 7-1-76 NMSA 1978 if the
22 information is revealed to individuals other than other
23 officers or employees of the county in question or the
24 department;

25 T. to authorized representatives of an Indian

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1 nation, tribe or pueblo, the territory of which is located
2 wholly or partially within New Mexico, pursuant to the terms of
3 a reciprocal agreement entered into with the Indian nation,
4 tribe or pueblo for the exchange of that information for tax
5 purposes only; provided that the Indian nation, tribe or pueblo
6 has enacted a confidentiality statute similar to this section;

7 U. information with respect to the taxes or tax
8 acts administered pursuant to Subsection B of Section 7-1-2
9 NMSA 1978, except that:

10 (1) information for or relating to a period
11 prior to July 1, 1985 with respect to Sections 7-25-1 through
12 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
13 to a committee of the legislature for a valid legislative
14 purpose;

15 (2) except as provided in Paragraph (3) of
16 this subsection, contracts and other agreements between the
17 taxpayer and other parties and the proprietary information
18 contained in those contracts and agreements shall not be
19 released without the consent of all parties to the contract or
20 agreement; and

21 (3) audit workpapers and the proprietary
22 information contained in the workpapers shall not be released
23 except to:

24 (a) the minerals management service of
25 the United States department of the interior, if production

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1 occurred on federal land;

2 (b) a person having a legal interest in
3 the property that is subject to the audit;

4 (c) a purchaser of products severed from
5 a property subject to the audit; or

6 (d) the authorized representative of any
7 of the persons in Subparagraphs (a) through (c) of this
8 paragraph. This paragraph does not prohibit the release of
9 proprietary information contained in the workpapers that is
10 also available from returns or from other sources not subject
11 to the provisions of this section;

12 V. information with respect to the taxes, surtaxes,
13 advance payments or tax acts administered pursuant to
14 Subsection C of Section 7-1-2 NMSA 1978;

15 W. to the public regulation commission, information
16 with respect to the Corporate Income and Franchise Tax Act
17 required to enable the commission to carry out its duties;

18 X. to the state racing commission, information with
19 respect to the state, municipal and county gross receipts taxes
20 paid by race tracks;

21 Y. upon request of a corporation authorized to be
22 formed under the Educational Assistance Act, the department
23 shall furnish the last known address and the date of that
24 address of every person certified to the department as an
25 absent obligor of an educational debt due and owed to the

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1 corporation or that the corporation has lawfully contracted to
2 collect. The corporation and its officers and employees shall
3 use that information only to enforce the educational debt
4 obligation of the absent obligors and shall not disclose that
5 information or use it for any other purpose;

6 Z. a decision and order made by a hearing officer
7 pursuant to Section 7-1-24 NMSA 1978 with respect to a protest
8 filed with the secretary on or after July 1, 1993;

9 AA. information required by a provision of the Tax
10 Administration Act to be made available to the public by the
11 department;

12 BB. upon request by the Bernalillo county
13 metropolitan court, the department shall furnish the last known
14 address and the date of that address for every person the court
15 certifies to the department as a person who owes fines, fees or
16 costs to the court or who has failed to appear pursuant to a
17 court order or a promise to appear;

18 CC. upon request by a magistrate court, the
19 department shall furnish the last known address and the date of
20 that address for every person the court certifies to the
21 department as a person who owes fines, fees or costs to the
22 court or who has failed to appear pursuant to a court order or
23 a promise to appear;

24 DD. to the national tax administration agencies of
25 Mexico and Canada, provided the agency receiving the

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1 information has entered into a written agreement with the
2 department to use the information for tax purposes only and is
3 subject to a confidentiality statute similar to this section;

4 EE. to a district attorney, a state district court
5 grand jury or federal grand jury for an investigation of or
6 proceeding related to an alleged criminal violation of the tax
7 laws or an action in fraud or other crime that may affect taxes
8 due to the state;

9 FF. to a third party subject to a subpoena or levy
10 issued pursuant to the provisions of the Tax Administration
11 Act, the identity of the taxpayer involved, the taxes or tax
12 acts involved and the nature of the proceeding; ~~and~~

13 GG. to the gaming control board, tax returns of
14 license applicants and their affiliates as defined in
15 Subsection E of Section 60-2E-14 NMSA 1978; and

16 HH. any written ruling on questions of evidence or
17 procedure made by a hearing officer pursuant to Section 7-1-24
18 NMSA 1978, provided that the name and identification number of
19 the taxpayer requesting the ruling shall not be provided."

20 Section 3. Section 7-1-73 NMSA 1978 (being Laws 1965,
21 Chapter 248, Section 74, as amended) is amended to read:

22 "7-1-73. FALSE STATEMENT AND FRAUD.--

23 A. Any individual or person ~~who~~ is guilty of a
24 felony if the person:

25 ~~[A.]~~ (1) willfully makes and subscribes any

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1 return, statement or other document that contains or is
2 verified by a written declaration that it is true and correct
3 as to every material matter and that the individual or person
4 does not believe to be true and correct as to every material
5 matter;

6 (2) willfully aids or assists in, procures,
7 counsels or advises in the preparation or presentation of a
8 return, affidavit, claim or other document pursuant to or in
9 connection with any matter arising under the Tax Administration
10 Act that is fraudulent or is false as to any material matter,
11 whether or not such falsity or fraud is with knowledge or
12 consent of the individual or person authorized or required to
13 present the return, affidavit, claim or document;

14 [B-] (3) files any return electronically,
15 knowing the information in the return is not true and correct
16 as to every material matter; or

17 [G-] (4) with intent to evade or defeat the
18 payment or collection of any tax, or, knowing that the probable
19 consequences of the person's act will be to evade or defeat the
20 payment or collection of any tax, removes, conceals or releases
21 any property on which levy is authorized or that is liable for
22 payment of tax under the provisions of Section 7-1-61 NMSA
23 1978, or aids in accomplishing or causes the accomplishment of
24 any of the foregoing [~~is guilty of a felony and~~]. As used in
25 Paragraph (2) of this subsection, "individual or person

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1 authorized or required to present the return, affidavit, claim
2 or document" means the taxpayer or other person liable for
3 taxes owed on the return, affidavit, claim or document stating
4 that such filing is true, correct and complete to the best of
5 such taxpayer's knowledge or other person's attestation.

6 B. Upon conviction [~~thereof~~] under Subsection A of
7 this section, a person shall be fined not more than five
8 thousand dollars (\$5,000) or imprisoned not less than six
9 months or more than three years, or both, together with costs
10 of prosecution.

11 C. As used in this section, "willfully" means
12 intentionally, deliberately or purposely, but not necessarily
13 maliciously."

14 Section 4. A new section of the Tax Administration Act is
15 enacted to read:

16 "[NEW MATERIAL] WILLFUL FAILURE TO COLLECT AND PAY OVER
17 TAXES.--Any person required by the revenue laws of the state to
18 collect, account for and pay over a tax imposed by those laws
19 who willfully fails to collect or truthfully account for and
20 pay over the tax due to the state, is guilty of a felony and
21 upon conviction pursuant to this section, in addition to other
22 penalties provided by law, shall be fined not more than ten
23 thousand dollars (\$10,000) or imprisoned not more than five
24 years, or both."

25 Section 5. Section 9-11-4 NMSA 1978 (being Laws 1977,

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1 Chapter 249, Section 4, as amended) is amended to read:

2 "9-11-4. DEPARTMENT ESTABLISHED.--There is created in the
3 executive branch the "taxation and revenue department". The
4 department shall be a cabinet department and shall consist of,
5 but not be limited to, an administrative services division and
6 [~~four~~] five program divisions as follows:

- 7 A. the audit and compliance division;
- 8 B. the property tax division;
- 9 C. the revenue processing division; [~~and~~]
- 10 D. the tax fraud investigations division; and
- 11 [~~D-~~] E. the motor vehicle division."

12 Section 6. A new section of the Taxation and Revenue
13 Department Act is enacted to read:

14 "[NEW MATERIAL] POWER TO EMPLOY LAW ENFORCEMENT OFFICERS
15 FOR TAX FRAUD INVESTIGATIONS DIVISION.--

16 A. The secretary shall employ police officers as
17 commissioned tax fraud enforcement officers as needed in the
18 tax fraud investigations division of the department to enforce
19 the tax laws or to investigate fraud and other crimes that may
20 affect the collection of taxes due to the state.

21 B. Tax fraud enforcement officers shall be
22 certified as having completed basic law enforcement training at
23 the New Mexico law enforcement academy or at another recognized
24 certified regional or federal law enforcement training program
25 equivalent to or more stringent than the basic law enforcement

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1 training at the New Mexico law enforcement academy.

2 C. The secretary may require specialized training
3 in addition to the requirements of Subsection B of this
4 section.

5 D. The secretary shall require continuing in-
6 service law enforcement training for tax fraud enforcement
7 officers as required by the New Mexico law enforcement academy
8 for all police officers."

9 Section 7. Section 30-1-8 NMSA 1978 (being Laws 1963,
10 Chapter 303, Section 1-8, as amended) is amended to read:

11 "30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--No
12 person shall be prosecuted, tried or punished in any court of
13 this state unless the indictment is found or information or
14 complaint is filed therefor within the time as provided:

15 A. for a second degree felony, within six years
16 from the time the crime was committed;

17 B. for a third or fourth degree felony, within five
18 years from the time the crime was committed;

19 C. for a misdemeanor, within two years from the
20 time the crime was committed;

21 D. for a petty misdemeanor, within one year from
22 the time the crime was committed;

23 E. for any crime against or violation of [~~the~~
24 ~~revenue laws of this state of~~] Section 51-1-38 NMSA 1978,
25 within three years from the time the crime was committed;

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1 F. for a crime against or violation of the revenue
2 laws of this state, within six years from the time the crime
3 was committed;

4 [~~F.~~] G. for any crime not contained in the Criminal
5 Code, other than a crime against or violation of the revenue
6 laws of this state, or where a limitation is not otherwise
7 provided for, within three years from the time the crime was
8 committed; and

9 [~~G.~~] H. for a capital felony or a first degree
10 violent felony, no limitation period shall exist and
11 prosecution for these crimes may commence at any time after the
12 occurrence of the crime."